

CC 98-147

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of:  
U S West Communications  
RCC 98-147

**COMMENTS SUPPORTING REJECTION OF PROPOSED RULEMAKING**

Submitted: September 24, 1998

By: Cottonwood Communications  
P. O. Box 451037  
Omaha, NE 68145-5037

Contact: Richard N. Dahlgren, Vice President  
Phone: (402) 896-2303  
FAX: (402) 896-0268  
e-mail: rd@cottonwood.com

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## **INTRODUCTION**

Cottonwood Communications is a new media, content creation company, located in Omaha, Nebraska.

The commission is proposing rules that would provide incumbent local exchange carriers a gauntlet by which those carriers could circumvent the intent of the Communications Act of 1996.

Cottonwood Communications strongly opposes any action that would ease regulatory restrictions until such time as "last mile" infrastructure is truly open to competition.

## **ARGUMENT AND SUPPORTIVE EXHIBITS**

All supportive exhibits containing confidential stamping have been entered into evidence without stipulation and are now public.

### **U S West's discriminatory conduct in prohibiting access to the video dialtone platform**

The commission attempted a similar easing of oversight in its implementation of Section 214 (video dialtone) in its Second Report And Order allowing the RBOCs to have "separate" enhanced services organizations from the common carrier organization for the purpose of bringing video dialtone to markets.

That scheme provided, at least in U S West's case, an opportunity to game the regulations in a way that unfairly and anti-competitively positioned U S West to capture and hold the market for common carrier provision of video and interactive services to their Omaha, Nebraska VDT market trial.

This proposed rulemaking would have the same effect and would in fact provide the baby bells unnecessary forbearance from the intent of the act, which is competition.

**In U S West's video dialtone trial in Omaha, U S West Communications initiated a two level scheme to control access by competitors to the common carrier platform while providing itself and its partners with technical and financial assistance discriminately.**

The level 1 organization consisted of a woman named Susan Portwood in Colorado who would either (1) provide a bare minimum of incomplete information to inquirers seeking access, or (2) refer inquirers to U S West's unregulated level 2 organization for inclusion in U S West's package of services and content.

U S West's unregulated entity was organizationally run by Larry Levine, Susan Portwood's immediate supervisor and later by Audley Webster who, along with Portwood, answered to Levine (Adjusted Employee Assumptions For Year End 1994-Exhibit A).

**VDT in Omaha included the provision of data services similar to those now envisioned for broadband internet services such as video-on-demand, home shopping, entertainment, real estate, banking, education and healthcare.**

Levine at U S West aggressively developed their unregulated level 2 organization while stifling the flow of information to competitive level 2 companies seeking access to their regulated level 1 platform (Affidavit Of Richard N. Dahlgren-Exhibit B and U S West Strategic Marketing Market Research And Analysis Project Proposal-Exhibit C). On page six of a document entitled "Project Turkey Dinner", **U S West assumes at the bottom of the page a competitive strategy that blocks new entrants access to immediate cash flows, increases the entry barriers and provides time to reach cost parity** (Project Turkey Dinner Discussion Outline-Exhibit D). The rest of the document illustrates the thought processes U S West used to capture the market anti-competitively.

The FCC Order And Authorization for the Omaha trial mandated that access to the common carrier platform be provided on a **first-come, first-served, non-discriminatory basis**. The commission went further to describe the common carrier platform to be **"a common carriage transmission service coupled with the means by which customers (end users) can access any or all programming provided by video dialtone service providers using video dialtone."** (Reference FCC 93-250, File No. W-P-C-6868, Adopted November 24, 1998, Released December 22, 1993.)

**The level 2 (unregulated) entity, in anticipation of a favorable court ruling allowing RBOC ownership of content, identified several partners for the provision of interactive applications** (6/17/94 Memo Regarding VIPs-Exhibit E).

Those partners included at least U S West Marketing Resources (now MediaOne), then headed by Solomon Trujillo, and a company called RSVP which became a partner with U S West in the development and deployment of healthcare information. U S West intentionally withheld technical information on interactive delivery and CPE from Cottonwood to prevent competitive access to households served while assisting RSVP in creating content and co-marketing exclusive positioning in healthcare with RSVP to Cottonwood customers ten months prior to an open enrollment period (7/14/93 Letter from Budnick/RSVP to Connolly/Immanuel Medical Center-Exhibit F, 7/21/93 Letter from Budnick/RSVP to Levine/U S West-Exhibit G, 2/15/94 Video Information Provider Feasibility Analysis-Exhibit H, 4/15/94 Letter from Budnick/RSVP to Connolly/Immanuel Medical Center-Exhibit I, 4/20/94 Memorandum-Exhibit J, 1/19/95 Letter from Budnick/RSVP to Levine/U S West-Exhibit K, RSVP Preliminary Business Plan-Exhibit L, RSVP Broadband Venture Joint Venture Agreement-Exhibit M, RSVP Broadband Venture Budget 94-95-Exhibit N, 5/2/95 Memorandum regarding RSVP-Exhibit O).

**Both the U S West regulated entity and the unregulated entity assisted and contracted with a "straw man" company called Interface Communications for packaging and delivery of video entertainment content in Omaha prior to open enrollment** (Interface Letter and Services Agreement-Exhibit P, and Post-Contract Kick-Off Meeting with Interface-Exhibit Q).

Levine, who oversaw both regulated and unregulated entities also worked closely with U S West Advanced Technologies, Scientific Atlanta, and 3DO (Affidavit Of Larry S. Levine-Exhibit R and 3DO Agreement-Exhibit S) in the development of technology and customer premises equipment for the storage and delivery of interactive services.

**U S West also imposed non-disclosed financial barriers for common carrier access in its enrollment period by requiring a \$100,000.00 letter of credit from parties interested in participating which was not disclosed in their illustrative tariff.** Interface Communications was able to provide the letter of credit contingent upon having a contract with U S West (Provider Eligibility Requirements Form with attached Conditional Letter of Credit-Exhibit T). RSVP was covered by a letter of credit provided by U S West to itself.

U S West, while operating under a tariff, then proceeded to bill itself. Each month would reflect new charges to its unregulated entity, but failed to reflect either payments made or charges carried forward (U S West Communications Invoices to U S West TeleChoice-Exhibit U). **The inference is that while others would be under tariff scrutiny with collection control, U S West could simply keep inter-company accounts balancing to zero each month without ever really paying anything from operations.** While the notice of proposed rulemaking attempts to address this issue, it falls short of mandating separate publicly held entities leaving the door wide open for financial leveraging of the incumbents unregulated entity.

Needless to say, Cottonwood Communications never successfully obtained access to U S West Communications' network in Omaha. Today that network consists of a 15 year cable franchise granted by the City of Omaha for a limited geographic area consisting largely of white upper middle class residents and cable modem data services operating without a tariff or other access to facility provided under the 96 Act.

#### **Potential deficiencies in safeguards**

The rulemaking is also sharply deficient in other safeguards that would prohibit a sham similar to Levine's insider reporting and control for purposes of orchestrating anti-competitive activities between regulated and unregulated entities.

The commission has essentially proposed a business structure that resembles the old AT&T/Baby Bell structure resulting in a multi-decade antitrust action by the Federal government and finally resolved by divestiture.

The proposed relief is tantamount to corporate welfare to some of the country's largest corporations. U S West, for example, has grown in stock value from a consolidated \$30.00/share value to, after a tax-free spinning off of U S West Communications and MediaOne, a consolidated price of over \$100.00/share equivalent.

The FCC can neither mandate business structure nor can it effectively enforce any such structural compliance. In Omaha, for example, Interface Communications was "leased," as part of their contract, facility from which they could receive and distribute 60-70 cable channels for \$100.00/month (Reference Exhibit P, Interface Services Agreement, Exhibit E). In spite of numerous co-location complaints, the commission deemed co-location as appropriately addressed in U S West's reply, which withheld appropriate reporting. Interface was also paid \$6,000,000.00 as a part of their out clause in spite of assurances to the FCC that no participant would receive anything beyond the trial. The fox cannot guard the hen house in the future competitive world outlined under the 96 Act.

It is quite likely that, in the very near future, all communications will converge to the digital realm and resultantly any provision for relief granted to the incumbent local exchange carriers relating to data services will ensure their unchallenged control of the future of communications.

#### **CONCLUSION AND RECOMMENDATION**

In lieu of proper oversight and enforcement by the commission in U S West's Omaha trial, Cottonwood Communications filed an action in Federal District Court in Omaha in 1994, Case No.: 8:94CV89. While continuing to seek relief in that venue, Cottonwood feels the documentation of events in a regulated/unregulated scheme would prove to be instructive to the FCC in consideration of this rulemaking.

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The problems encountered by Cottonwood and all others who were not hand-selected by U S West as contracted partners is precisely what will occur under this proposed rulemaking. Our attorneys have realistically projected that our court battle could easily continue to the year 2005. Most of the supporting documents have never been available to the commission, nor would they be without legal action that would protract and stifle fair treatment of potential competitors for years to come.

We strongly urge the commission to reject this proposed rulemaking while keeping the current denials of the RBOCs requests in place.

If adopted, the rulemaking would open a floodgate of legal actions by the baby bells that would likely overturn the few safeguards the commission included in the rulemaking, effectively allowing the RBOCs complete unregulated control over data services.

Respectfully submitted,

COTTONWOOD COMMUNICATIONS



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Richard N. Dahlgren, Vice President  
P. O. Box 451037  
Omaha, NE 68145-5037  
Phone: (402) 896-2303  
FAX: (402) 896-0268  
e-mail: rd@cottonwood.com

**EXHIBITS**

Exhibit A	Adjusted Employee Assumptions For Year End 1994
Exhibit B	Affidavit Of Richard N. Dahlgren
Exhibit C	U S West Strategic Marketing Market Research And Analysis Project Proposal
Exhibit D	Project Turkey Dinner Discussion Outline
Exhibit E	6/17/94 Memo Regarding VIPs
Exhibit F	7/14/93 Letter from Budnick/RSVP to Connolly/Immanuel Medical Center
Exhibit G	7/21/93 Letter from Budnick/RSVP to Levine/U S West
Exhibit H	2/15/94 Video Information Provider Feasibility Analysis
Exhibit I	4/15/94 Letter from Budnick/RSVP to Connolly/Immanuel Medical Center
Exhibit J	4/20/94 Memorandum
Exhibit K	1/19/95 Letter from Budnick/RSVP to Levine/U S West
Exhibit L	RSVP Preliminary Business Plan
Exhibit M	RSVP Broadband Venture Joint Venture Agreement
Exhibit N	RSVP Broadband Venture Budget 94-95
Exhibit O	5/2/95 Memorandum regarding RSVP
Exhibit P	Interface Letter and Services Agreement
Exhibit Q	Post-Contract Kick-Off Meeting with Interface
Exhibit R	Affidavit Of Larry S. Levine
Exhibit S	3DO Agreement
Exhibit T	Provider Eligibility Requirements Form with attached Conditional Letter of Credit
Exhibit U	U S West Communications Invoices to U S West Telechoice

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**CERTIFICATE OF SERVICE**

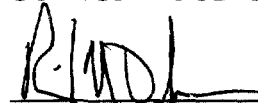
I, RICHARD N. Dahlgren, Vice President of Cottonwood Communications, hereby certify that:

On this 24rd day of September, 1998, I caused a copy of the foregoing "COMMENTS SUPPORTING REJECTION OF PROPOSED RULEMAKING" to be served on the persons certified below by hand delivery via Federal Express:

Original and four copies:      Commission's Secretary  
   Magalie Roman Salas  
   Office of the Secretary  
   Federal Communications Commission  
   1919 M St. N.W., Room 222  
   Washington, D.C. 20554

One copy:                              International Transcription Services, Inc.  
   1231 20th Street, N.W.  
   Washington, D.C. 20036

COTTONWOOD COMMUNICATIONS



Richard N. Dahlgren, Vice President  
P. O. Box 451037  
Omaha, NE 68145-5037  
Phone: (402) 896-2303  
FAX: (402) 896-0268  
e-mail: rd@cottonwood.com

September 24, 1998  
Exhibit A

In the Matter of:  
U S West Communications  
FCC 98-147

ADJUSTED EMPLOYEE ASSUMPTIONS FOR YEAR END 1994

**TOTAL = 4**  
Dennis Stanefield (SG5)  
Marie Amicucci (SG6)  
Ron Fernandez (SG5)  
Support - vacant - occupational

**TOTAL = 4**  
Susan Portwood (SG6)  
Product Development - Vacant (SG5)  
Market Manager - vacant (SG5)  
Support - vacant - occupational

**TOTAL = 9 (AVG = 7)**  
Andy Elsemann (SG7)  
Vacant (SG6)  
5 Vacant (SG5)  
2 Vacant (SG2)

**TOTAL = 90**  
Larry Levine  
Bus. Dev. Dir. - vacant - (SG6)  
Competitive/Trend Analysis Mgr - McCoy(?) (SG5)  
Project Manager - vacant (SG5)  
Adm. Assis. - vacant (SG2)  
Dan Hughes (SG2)  
Blaine Geist (SG2)

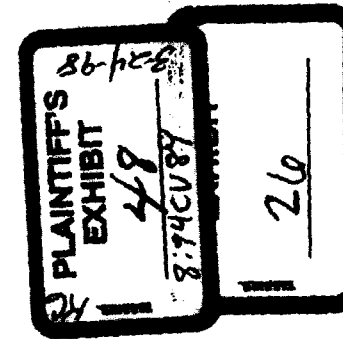
**TOTAL = 75 (AVG = 49)**  
Audley Webster  
Shell Green (SG2)

**TOTAL = 12 (AVG = 10)**  
Marketing Director - Vacant (SG7)  
Connie Kennedy (SG6)  
Jasnette Noyes (SG5)  
Terri Ford (SG5)  
Home Shopping Coord (SG5)  
VOD Prod Mgr (SG5)  
Video Info Svcs Prod Mgr (SG5)  
Advertising & Promo Mgr - vacant - (SG5)  
Gateway Coordinator (SG4)  
Dave Koon - Occupational  
2 Vacant - Occupational

**Regional PR Director-vacant (SG6)**  
Market Support Manager - Alice Balseley (SG5)  
Methods, Procedures/Training - vacant - (SG4)  
Video Svcs Data Coll. - B J Mendell (SG5)  
VMOC Mgr - Dnvr - vacant (SG5)  
Deployment Mgr - vacant (SG5)  
Video Svcs Data Proc. Mgr - vacant - (SG4)  
2 Vacant - Occupational

Grant Gabrielson (SG5)  
Community Relations (SG5) ↑  
Field Marketing Mgr - Susan Allen (SG4)  
Tech Mgr - vacant (SG4)  
Data Mgr - vacant (SG4)  
Sales/CSR Supervisor - Linda Colton (SG4)  
Installation & Repair Mng (SG4)  
Office Manager- Mari Mortensen (SG2)  
  
Support - vacant - 2 people  
In House Techs - vacant - 7 people  
Repair Techs - vacant - 6 people  
Customer Service Reps - vacant - 17 people  
Vacant - Dispatch Help Desk - 2 people

\* assumes start date of Sept. 1, 1994



CONFIDENTIAL

HOSTLY MEDIA  
0004915

*Admin  
S2*



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MOSTLY MEDIA, INC.; PIXEL IMAGE )  
TRANSFORMATTE, INC.; and IMAGEWARE )  
INC., d/b/a Cottonwood Communications; )  
Nebraska Corporations, )

Plaintiffs, )

vs. )

U.S. WEST COMMUNICATIONS, INC.; )  
and U.S. WEST MARKETING RESOURCES )  
GROUP, INC., d/b/a U.S. West Direct; )  
Colorado Corporations, )

Defendants. )

CASE NO. 8:CV94-89

**AFFIDAVIT OF  
RICHARD N. DAHLGREN**

STATE OF NEBRASKA )

) ss.

COUNTY OF DOUGLAS )

RICHARD N. DAHLGREN, being first duly sworn, deposes and says:

1. I am a vice president of Imageware, Inc., d/b/a Cottonwood Communications ("Cottonwood"), one of the plaintiffs herein. In my capacity as a producer of media, I work with analog video, digital video, linear video, and non-linear video, which are various forms of media. I familiar with how these various forms of media are employed to produce interactive multimedia video; and I have personal knowledge of the facts stated herein.

2. In an interactive multimedia video network, all programming, whether it is analog (one-way) or digital (two-way), will be accessed through the interactive multimedia based interface on the viewer's screen with the use of a remote control device. Such a device was described by a U.S. West spokesperson, Dave Banks, in a January 15, 1995 Omaha World Herald news article, a copy of which is attached hereto as Exhibit "A". Mr. Banks described it as a "remote control device that functions like a computer 'mouse.' The device guides a pointer to the screen and then clicks to activate parts of the screen--sending signals to a special set top box." The article also says the device is how viewers "choose programs and services appearing on their television screens . . ."

3. A digital channel allows two-way communication with the viewer; however, many one-way services may also be provided on a digital channel. An analog channel allows only one-way communication; however, many services may be "bundled" together on a single analog channel, with the viewer selecting various services by use of the remote control device. Thus, to the viewer in an interactive multimedia control setting, each analog channel provides a branch of information that can be accessed randomly in an identical manner as a digital channel. In looking at the screen, some information will be joined in progress (linear) or started randomly on-demand (non-linear). All media, however, whether analog or digital, will be displayed on a TV and will be accessed through U.S. West's interactive multimedia platform. As a result, the kinds of multimedia products and services that can be delivered over both analog and digital channels may be very similar.

4. In addition to the fact that similar products and services may be delivered over both analog and digital channels, digital media may even be used on analog channels. In other words, analog video may be created using digital video, digital graphics and digital sound. Digital video has been employed in television production for many years. Most of the animations and much of the commercial content transmitted over cable systems today employs digital video, at some level, for its creation. Thus, the employment of one type of video or another means nothing to the viewer.

5. I have read the affidavit of Susan Portwood wherein she asserts that Interface, Knowledge and Metrovision have no multimedia or interactive television products planned for the Omaha broadband trial. However, in choosing content providers for the broadband trial, U.S. West does not distinguish between providers based upon the type of products or services they will provide. All potential participants are lumped together as "level 2" content providers.

6. I received a copy of a U.S. West press release from Randy Tucker of the Omaha World Herald, a copy of which is attached hereto as Exhibit "B." To the best of my knowledge, the margin notes on Exhibit "B" were written by Mr. Tucker. In the press release, Interface, Knowledge and Metrovision are all identified as "video content providers (also known as 'level 2's')." Despite the fact that these entities have "requested analog channel capacity", the press release headline announces the "Omaha Multimedia Trial Deployment Plans"; and Interface, Knowledge and Metrovision are described, throughout, as being part of an "interactive multimedia trial."

7. A further indication that U.S. West does not distinguish between providers based upon whether the provider will utilize the analog or digital channels is the letter used by U.S. West to invite applications. A copy sent to Cottonwood on or about May 20, 1994, is attached hereto as Exhibit "C." On

page one of the letter, Ms. Portwood states that "(i)t is being sent to all individuals and companies that have expressed interest in participating as a Provider in the Omaha BVDT Trial." Further, on page 3, in the first paragraph following the heading, "Channel and Capacity Availability", Ms. Portwood refers to the availability of both analog channels and digital capacity and states that "(a) Provider may request one type or both types of service."

8. The May 20, 1994, letter from Ms. Portwood, Exhibit "C", also includes a requirement (¶1, page 2) that the Provider must submit a letter of credit for \$100,000 as proof of financial viability. I have no direct, first-hand knowledge that U.S. West has provided guarantees to content providers, such as Metrovision, Interface or Knowledge, to assist them in obtaining a letter of credit. However, I have been told by a person with first hand knowledge that, in the past, U.S. West has provided a financial guarantee for a service bureau in an earlier enhanced services offering called Community Link to enable the service bureau to purchase equipment for distribution to consumer's homes in order to be able to participate in the venture.

9. In November, 1994, U.S. West sent to Cottonwood, through our attorney, a memorandum entitled "APPLICATIONS ON THE LEVEL 2 GATEWAY." This memorandum, which is attached as Exhibit "D", describes the contents of market studies and business plans which are to be performed and prepared by level 2 content providers such as Interface, Metrovision and Knowledge. According to Exhibit "D", the market research should demonstrate a consumer need for the service. The potential provider's research may also be supplemented by U.S. West's own internal market research. The business plan is supposed to identify the potential for the market, strategies, and a description of how the service is envisioned to work. Exhibit "D" also states that a technical feasibility analysis may be done.

10. I am aware that plaintiffs have also requested documents and records from Edina Realty in Edina, Minnesota. The request was made because of the similarity of the described offering of Edina Realty to a product Cottonwood developed in 1993. In 1993, over the course of several months, Cottonwood developed and demonstrated a database product that enables a consumer to electronically search and retrieve real estate information by different user selectable criteria, including price, number of bedrooms, geographic location and a number of other choices. The product can be displayed on a computer screen and, potentially, on an interactive television system or computer on-line wired or wireless digital modem connection. On or about January 17, 1995, I read an article in the evening edition of the Omaha World Herald stating that U.S. West and Edina Realty are planning to develop a similar product described as "an interactive television system to let people shop for houses from their own homes." The same article appeared in the morning edition on January 18, 1995; and a copy is attached hereto as Exhibit "E."

FURTHER AFFIANT SAYETH NAUGHT.

\_\_\_\_\_  
Richard N. Dahlgren

Subscribed and sworn to before me this \_\_\_\_ day of March, 1995.

\_\_\_\_\_  
Notary Public

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing document was mailed by regular U.S. mail, postage prepaid, on \_\_\_\_\_, to the following:

Peter D. Willis  
KUTAK ROCK  
Suite 2900  
717 Seventeenth Street  
Denver, CO 80202-3329

David A. Jacobson  
Tory M. Bishop  
KUTAK ROCK  
1640 Farnam Street  
Omaha, NE 68102

\_\_\_\_\_

# U S West Interactive-TV Providers Keep Mum on Programming

Continued from Page 1

nothing truly unique and truly innovative," said Jeffery Morgan, president of Interface Communications Group, a private cable operator based in Boulder, Colo.

"If we get to do what we want to do, residents in the test area will see some products that they haven't seen before," Morgan said.

That's why Morgan was tight-lipped when asked about his specific plans for an interactive cable trial. He did not want to tip other cable providers.

My goal is to be extremely competitive on the (U S West) network and with incumbents," Morgan said.

The incumbents Morgan referred to are established cable providers in Omaha, such as Cox Cable Communications and Douglas County Cablevision. Cox also is planning to establish an interactive cable system to compete with U S West.

Unlike Cablevision or Cox, U S West provides only the cable connections, the programs or services themselves. Providing only cable access was one of the restrictions imposed on U S West by the Federal Communications Commission, which recently granted U S West permission to allocate cable channels for test.

U S West needed FCC approval because it is seeking to offer cable service in its telephone region. However, a federal court ruling may clear the way for U S West someday to provide programming, in addition to traditional telephone service.

Boulder's Interface has been granted exclusive access to 49 of the 77 analog channels on the U S West network, Morgan said. However, he said, only 10 of those channels would be dedicated to Interface.

The other channels would be shared with other cable providers, Morgan said. There'll be certain products that are all going to want to carry, like CNN and CNN," Morgan said. "It would be silly to carry them all on separate channels."

Morgan said Interface would likely stage popular programs appearing on shared channels with the company's unique cable offerings.

We could put CNN together with other different channels as a package," Morgan said. "We have an idea of what we want to do."

U S West will host a meeting this week in Denver to help participants decide which channels would be shared and which channels would be unique during the test.

*'We're going into Omaha with the idea of trying to offer the customer something truly unique and truly innovative. If we get to do what we want to do, residents in the test area will see some products that they haven't seen before.'*

— Jeffery Morgan  
President, Interface Communications Group

Besides Interface, the cable providers listed by U S West as wanting to participate in the test are Cablewest Communications Corp., based in Murray, Utah; Cable Video Store, a unit of Graff Pay-Per-View; and Metrovision Inc., the Atlanta-based parent company of Cablevision.

U S West Broadband and Multimedia Services, the division of U S West that developed the interactive network, will use one channel for promotions.

The sixth information provider is the Knowledge Network of Omaha, which now broadcasts educational programs on four local-access channels on the Cox Cable system.

Henry Harris, president of Metrovision, said that for his company to be competitive on the U S West network, the company will have to change its approach to providing cable programming in Omaha.

"The posture I take on the phone company system has to be different than with Cablevision because I won't have as many channels available to me," Harris said.

Cablevision has about 17,000 subscribers, mostly in west Omaha, Harris said. If successful, the U S West network likely would attract some Cablevision customers.

But, Harris said, because of the interactive capabilities of the U S West network, "I might gain back the customers I lose on my cable system."

Knowledge Network has tentatively been granted one cable channel on the U S West network.

Knowledge Network is a nonprofit organization whose members include the University of Nebraska at Omaha, Creighton University and Metro Com-



HOWARD LOWE: "Local educators have been very innovative in using technology. We just look at this as a natural extension of that, just as Cox Cable was 10 years ago."

munity College.

The group has proposed using the U S West network to broadcast a "best of" package of its current programming, said Howard Lowe, general manager of radio and television operations at UNO.

"Local educators have been very innovative in using technology," Lowe said. "We just look at this as a natural extension of that, just as Cox Cable was 10 years ago."

The Knowledge Network would not provide interactive programming during the U S West test, Lowe said.

"We hope to be part of the interactive network someday," Lowe said. "But the cost of developing interactive materials is quite high, and we're not ready to participate yet. We want to see it (interactive cable) develop before we invest in it."

U S West already has begun testing cable signals in an area just west of Boys Town, where the test will begin first in the homes of 50 U S West employees, said Dave Banks, a U S West spokesman.

The employees will be able to choose

## Interactive-TV Providers Mum on Programming

BY RANDY TUCKER  
WORLD-HERALD STAFF WRITER

Even James Bond, the world's most famous spy, would be challenged to gather details about what will appear on U S West Inc.'s interactive cable TV trial in Omaha later this year.

U S West has named six program providers so far for the new interactive cable network, which will link telephones, television and computers through what is known as broadband communications technology.

But competition among the companies, both cable industry veterans and newcomers, has led them to remain guarded about exactly how they plan to

use the U S West network.

In addition, U S West has signed nondisclosure agreements with the companies that bar U S West from discussing details of their proposals.

The U S West network would allow the companies to offer such services as videos-on-demand, home banking, shopping and various business, educational and government services.

Representatives of the cable companies said the key to their success on the U S West network will be offering unique and original programming not available from the competition.

"We're going into Omaha with the idea of trying to offer the customer

Please turn to Page 3, Col. 1

programs and services appearing on their television screens with a remote-control device that functions like a computer "mouse." The device guides a pointer on the screen and then clicks to activate parts of the screen — sending signals to a special set-top box, Banks said.

If the initial test is successful, U S West officials said they will expand the test to a market area of more than 50,000 homes in west Omaha by mid-1995.

Participating cable providers would set the pricing and format for the individual programming choices.

OWA 1/15/95

U S WEST Communications, Inc.  
1801 California Street  
Denver, CO 80202

# News Release

**U S WEST**  
COMMUNICATIONS @

Release Date: December 23, 1994  
Contact: { Dave Banks, 303-896-2721  
Mary Hisley, 202-429-3105 }

## U S WEST Announces Omaha Multimedia Trial Deployment Plans following the FCC Action on Channel Allocation

Omaha, Neb. - Following last Friday's (12/23/94) Federal Communication Commission action approving U S WEST Communications' channel allocation proposal, the company today announced plans to move forward with its interactive multimedia trial in this community, site of the largest interactive multimedia trial in the United States. The company said it intends to move forward as soon as an FCC order is released. *- when expected, what says*

"The FCC's action marks the next important phase in the testing and launch of interactive multimedia services in Omaha," said Larry Levine, vice president and general manager of U S WEST Communications' Broadband and Multimedia Services Group.

*One step at a time across the country UNO*  
The next step, according to Levine, is to notify the video content providers (VCPs) who requested to participate in the trial as to the number of analog channels each will receive as a result of the FCC's decision. The VCPs who requested analog channel capacity in Omaha are: Interface Communications Group, Inc.; U S WEST Broadband and Multimedia Services; Cablewest Communications Corp.; MonoVision, Inc.; Henry W. Harris; Cable Video Store; and The Knowledge Network of Greater Omaha. (USA Video Corporation and Telephone Video of America have requested capacity on the digital video network only.) U S WEST Broadband and Multimedia Services group has requested only one analog channel which it intends to use as a promotional channel. *who are they what will broadcast why*

*television programming*  
"We expect the video content providers will convene in January to select the programming which will appear on the shared analog channels," said Levine. He said U S WEST will provide a facilitator to assist in these deliberations, but will not itself participate in any decisions concerning selection, pricing, or presentation of video programming. *when?*

*and not as it is*  
Levine said he expects this allocation process to take 60-90 days. Following that process, all of the video content providers (also known as "level 2s") can proceed with activities necessary to launch their consumer offerings. (U S WEST Communications' "level 2" organization expects to begin a "friendly user" trial to homes of about 50 employees starting in late first quarter.) *from whom*

Following successful completion of its friendly user trial, U S WEST will make its services available to customers in a market trial area of more than 40,000 homes. This is expected to start during second quarter 1995. *where*

In other FCC action last Friday, the Commission dismissed without prejudice four video dialtone applications for Albuquerque, N.M.; Colorado Springs, Colo.; Des Moines and Cedar Rapids, Iowa.

"While we are disappointed with this action, we believe the fact they were dismissed without prejudice is a positive sign," said Levine. "We intend to make the necessary revisions and re-file them as soon as possible."

- more -

U S WEST Communications announced in February 1993 that it would build an interactive multimedia network serving customers in its 14-state region. Two months later, the company revealed plans for the technical and market trials in Omaha. The suppliers for the Omaha technical trial are Scientific-Atlanta, Inc. (video transmission components and digital set-top terminals); 3DO (set-top terminal technology); Digital Equipment Corp. (video server); New Century Communications (subscriber-management software) and AT&T (telephony components).

U S WEST is in the connections business, helping customers share information, entertainment, and communications services in local markets worldwide. Its largest subsidiary, U S WEST Communications, provides telecommunications service to 25 million customers in 14 Western and Midwestern states.

Susan A. Portwood  
Director  
Product Development  
Broadband and Multimedia Services



May 20, 1994

Ms. Laurie Dahlgren  
Cottonwood Communications  
148 South 11th Street  
Omaha, NE 68102

Dear Ms. Dahlgren,

This letter provides information regarding the opportunity to participate in U S WEST Communication's (USWC) Basic Video Dialtone (BVD) Trial in Omaha, Nebraska. It is being sent to all individuals and companies that have expressed interest in participating as a Provider in the Omaha BVD Trial. Included in this letter are the eligibility requirements for participation in the Omaha BVD Trial, a description of channel and capacity availability, and a description of the process for submitting a request to become a Provider in the Omaha BVD Trial.

The proposed start date for the technical portion of the Omaha BVD Trial is July 1, 1994, with a market trial anticipated to begin within two to six months thereafter. These dates, and the plans for the market trial delineated in this letter, are dependent upon our technical trial results and upon receiving approval from the Federal Communication Commission (FCC) for our market trial tariff. We plan to file the market trial tariff for Omaha within the next sixty days. A copy of this tariff will be sent to you immediately after it is filed with the FCC. Please note that if USWC chooses to offer BVD subsequent to the Trial, the services offered at that time are subject to approval by the FCC and may differ from those available during the trial.

The location of the Omaha BVD Trial is illustrated on the enclosed maps. No more than 2,500 homes and businesses will be served in the technical portion of the trial. It is currently estimated that 50,600 residences and 2,600 businesses will be served during the market portion of the trial. Enclosed is USWC's 214 Application, approved by the FCC in December, 1993, which provides preliminary details about the Trial. There will be no charges from BVD to the Provider's for the technical portion of the Trial. A partial listing of the BVD services and rates USWC proposes to include in the market trial tariff, are included in the first attachment to this letter.

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### **Eligibility Requirements**

The following eligibility requirements for participating in the BVDV trial apply to both analog and digital video programming Providers. These requirements are designed to promote a robust trial. By ensuring that all Providers are technically and financially capable of offering programming to end users, we hope the widest possible range of video service options will be available to be sampled by participating end users.

Based on a Provider's documentation of its ability to meet the eligibility requirements listed below, USWC will identify companies as eligible to participate as Providers in the Omaha BVDV Trial. Please submit the following documentation in order to be considered for participation in the trial:

1. **Financial Viability**

The Provider must submit a letter of credit for \$100,000.

2. **Access to Programming**

Within forty five (45) days from the date of USWC's notification to the Provider of the Provider's participation in the trial, the Provider must submit to USWC documentation that it has access to programming and that it is authorized to market and deliver such programming to end user customers. The documentation submitted to USWC by the Provider may, for example, consist of a letter from the Provider's programming source confirming the source's intent to contract with the Provider for access to the source's programming. It is the responsibility of the Provider to obtain all necessary licenses, including copyright licenses for music performing rights.

3. **Programming Delivery**

The Provider must submit to USWC documentation which describes the means of delivering programming to the Provider's gateway (e.g., video/information servers, satellite down links, microwave dishes). The Provider's gateway will be connected via transport facilities to the USWC BVDV Gateway located at 2433 South 130th Circle, Omaha, Nebraska 68144. The Provider's gateway must be located within the Omaha Local Access and Transport Area, LATA, (see the enclosed LATA map) and within thirty route miles of the USWC BVDV Gateway. Please note that the rate elements for the connection from the Provider's premises to USWC's premises will be distance sensitive.

4. **Customer Provided Equipment (CPE)**

If the Provider intends to offer digital services, it must submit a letter from the manufacturer of the CPE it plans to deploy indicating that the manufacturer will meet network disclosure technical requirements (see attached network disclosure documents) and has the ability to produce sufficient quantities of CPE to meet the Provider's anticipated end user customer penetration rates.

5. **Inside Wiring**

The Provider must document the means by which it will provide installation and maintenance of inside wiring from USWC's network interface at the end user customers' premises to the end user customers' CPE.

#### 6. Signal Quality Standards

The Provider must state its intent to comply with USWC's published signal quality standards.

A Provider Eligibility Requirements Form is enclosed with this letter. Please use this form to document your responses to the requirements listed above.

#### Channel and Capacity Availability

Analog channels and digital capacity will be offered for the Omaha Trial. A Provider may request one type or both types of service. Twelve (12) of the analog channels will be shared by all Providers and include the BVDI menu. These channels will not have interdiction capability and are called common channels. Twenty eight (28) additional analog channels will also be shared but will have interdiction capability and are called shared channels. There will be at least thirty seven (37) non shared analog channels that have interdiction capability. Non shared channels will be offered on a first come, first served basis to Providers in blocks of channels and as single channels.

Interdiction is the ability to alter an end user's channel configuration. It will be offered on the shared and non shared analog channels. Common channels will not have interdiction capability. Thus, all end users, i.e., subscribers to any Providers' analog or digital services, will receive analog common channels.

USWC has developed guidelines for requesting and allocating analog channels. These guidelines and further descriptions of the types of analog channels available are delineated in the enclosed Charts 1 and 2. This plan for allocating channels is currently being reviewed by the FCC. Although we anticipate the plan will be implemented in its current form, the FCC may make changes to it. You will be notified as soon as possible by USWC if changes are made that require revisions to our guidelines for requesting and allocating channels.

Programming and channel number designations for analog common channels will be determined by all Providers as a group. Programming and channel number designations for shared analog channels will be determined by the group of those Providers who intend to order shared channels. Once the eligibility status of all the applicants has been determined, these two groups of Providers will be asked to convene prior to the start of the technical portion of the Omaha BVDI Trial to make the programming and channel number decisions. USWC will provide a facilitator, who is not affiliated with USWC, to lead the group. If channels cannot be offered on a shared basis because the group is not able to reach agreement on programming content, those channels will be included with the non shared channels to be allocated to individual Providers.

Channel numbers for the blocks of non shared channels will be assigned by the USWC Basic Video Dialtone Product Development team. Numbers will be assigned on a first come, first served basis. Every attempt will be made to assign consecutive numbers within each block of channels.

Digital capacity will be available on a continuous and on an on-demand basis. Continuous digital service provides an uninterrupted, downstream only, pathway. On demand digital pathways are of defined duration and accommodate both downstream and upstream signals.

To request analog channels, please complete and submit the enclosed Analog Channel Request Form at the same time you submit the Provider Eligibility Requirements Form. If you intend to request digital services, USWC would like to have an estimate of your digital capacity needs during the Omaha BVDT Trial. Please provide this information on the enclosed Estimate of Digital Capacity form.

**Obligations of Participants and USWC**

Neither your submission of eligibility documentation nor your determination of eligibility by USWC obligates you to participate in the Omaha BVDT Trial. Likewise, USWC does not guarantee that you will be a participant. If you meet all the eligibility requirements and are allocated analog and/or digital channels for use in the Trial, you will be required to sign a Memorandum of Understanding prior to the start of the technical portion of the Trial that will affirm your intent to participate in the Trial and USWC's acceptance of your participation. The Memorandum of Understanding will include network testing and acceptance procedures in order to ensure a functional network prior to the commencement of the Omaha BVDT Market Trial.

**Time Frames for Submission of Documentation and Forms**

Documentation and completed forms must be sent by U. S. Certified Mail and must be received by us no later than June 13, 1994 in order for your request for allocation of analog channels to be included in the channel allocation process for the BVDT Trial. **Please note that non shared analog channels will be allocated and channel numbers assigned for non shared channels on a first come, first served basis so it may be advantageous for you to submit your documentation as soon as possible prior to June 13.** As of August 1, 1994, USWC will no longer accept requests to participate in the BVDT Trial in Omaha.

Information submitted to USWC in response to this letter and marked "Confidential" by the sender will be held in confidence as to individual responses by the USWC Basic Video Dialtone Product Development team for a period of one (1) year from the date of receipt by USWC, except as otherwise required by any applicable federal, state, and local law, court order, agency order, rule, and regulation or unless written permission is granted by the sender to disclose such information. The Product Development team includes the facilitators USWC provides for the Provider meetings. Aggregated response information may be shared with others at USWC's sole discretion.

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Please send your completed forms and documentation to:

Susan Portwood  
Director, Broadband Product Development  
U S WEST Communications, Inc.  
1999 Broadway  
28th Floor  
Denver, Colorado 80202

Letters will be mailed to all Providers by June 17, 1994, notifying them of their eligibility status and, if non shared analog channels have been requested, indicating the number of non shared analog channels allocated to them. The facilitator for the analog common and shared channel programming and number selection processes will be in contact with each eligible and appropriate applicant by June 24, to arrange a meeting time and place for the two Provider sessions.

Should you have difficulty filling out the enclosed forms and require assistance, please contact either Susan Portwood at (303) 965-8089 or Ceil Matson at (303) 965-0802.

Sincerely,



Susan Portwood  
Director Product Development

Enclosures:

Services Proposed for the Omaha BVDT Market Trial  
Maps of Omaha BVDT Serving Area  
USWC 214 Application for Omaha, Nebraska  
Omaha LATA Map  
"Network Disclosure News" Nos. 121 and 148  
Provider Eligibility Requirements Form  
Chart 1 - Analog Channel Descriptions  
Chart 2 - Analog Channel Allocation Procedures  
Analog Channel Request Form  
Estimate of Digital Capacity Form

00633

November 10, 1994

Memorandum to: Ms. Laurie Dahlgren

From: Nancy Sullivan  
Head of Customer Sales and Service

SUBJECT: APPLICATIONS ON THE LEVEL 2 GATEWAY

Ms. Dahlgren,

I wanted to share with you the typical process we follow when evaluating new applications for inclusion on the Level 2 Gateway.

Because we will be providing services in highly competitive markets, one of the things we seek to ensure about each and every application we carry is that it is Market Driven. One of the first things we generally request is a market research summary, demonstrating true consumer need for a service. In some cases, this information is supplemented for internal review with our own internal market research.

We then request information that would typically be included in a Business Plan, i.e., that identifies the potential for the market, resource requirements, high level technical descriptions, and strategies. Also included at this stage typically would be a clear description of how the service is envisioned to work. Of course a clear working knowledge of this would be necessary to execute market research as discussed above.

Once we have received the type of information above, we will evaluate the potential of the application. If we feel there is demonstrated market need, synergy with our strategic objectives, and some assurance that the service could be operated over our gateway, we may embark on a technical feasibility analysis.

The technical feasibility analysis is completed to more clearly define the interface requirements, performance requirements and specifications necessary to carry the application to end users. This analysis will also give us an idea of the economic feasibility of porting the service to the gateway...of course sometimes it is just not

economically feasible to carry the service, given the market potential.

Of course, in order to complete a technical feasibility analysis it is necessary to have full non-disclosures in place to ensure the confidentiality of both parties' information. Sometimes, these documents would be in place earlier, given the nature of information disclosed by the Information Provider relative to their particular application.

If we complete a successful technical feasibility and the market demand appears healthy enough, it may be the desire of both parties to negotiate inclusion of the service on the Level 2 Gateway. At that time, a contract would be created for the specific application and work to deliver the service to market would commence.

If it seems appropriate, further discussions may be arranged through the legal staffs currently working with both companies.

TECHNOLOGY

OWH  
1-18-45

## U S West to Start Real Estate System

Minneapolis — U S West and Edina Realty said they plan to develop a system for selling houses by computer.

The joint project, named AgentEdge, will let home buyers and agents get detailed real estate information by computer, including wireless data transmission.

The two eventually will develop an interactive television system to let people shop for houses from their own homes, U S West said.

EXHIBIT "E"

## U S WEST STRATEGIC MARKETING MARKET RESEARCH AND ANALYSIS PROJECT PROPOSAL

**PROJECT NAME:** Evaluation Of Video Dialtone Level 1 Opportunities  
**REQUESTED BY:** Susan Portwood  
USWC Strategy Development  
**SUBMITTED BY:** Rick Husted  
Market Research and Analysis

**DRAFT**

### BACKGROUND

U S WEST Communications has announced plans to conduct a broadband video services trial in Omaha, Nebraska, scheduled to begin sometime in early 1994. This trial is being designed to reflect U S WEST's interpretation of the FCC's Video Dialtone Order, which enables the RBOC's to compete in the area of video services delivery.

The provision of Video Dialtone (VDT) involves several different *levels* of service, each carrying unique roles and responsibilities for U S WEST.

- Level 1** - At this level U S WEST is the provider of basic VDT access. Level 1 is regulated, operates under tariffed rates, and would carry an access charge. Those considering Level 1 service would need to address all other aspects related to service delivery (e.g., customer service, billing, promotion, etc.).
- Level 2** - At this level U S WEST would be an enhanced service provider. In addition to access to the VDT network, U S WEST would also be responsible for providing customer service, billing, and other infrastructure related activities. Level 2 is non-regulated and U S WEST would be a customer of its own Level 1 service.
- Level 3** - This level is where the content is packaged and sold to the subscriber. Level 3 providers would need to operate in conjunction with a Level 2 provider for access to the VDT network as well as for all infrastructure related services (e.g., billing, customer service, promotion, etc.). U S WEST is only allowed to own 5% of any video entertainment content that is developed. Level 3 providers could also be direct customers of Level 1.

U S WEST is actively pursuing Level 2 opportunities and is interested in understanding what opportunities may exist at Level 1. The Level 1 gateway, per the FCC's Video Dialtone Order, allows for equal terms and conditions to apply to all video services providers. It also ensures that an RBOC's own video services offering will not be given preferential access to the video dialtone network over that afforded competitive providers of services. The Level 1 gateway is essentially a framework for wholesale customer access to video services customers.

The parameters of offering Level 1 products and services are defined by the FCC, and the technology required to offer Level 1 products and services is being fully addressed by USWC's broadband team efforts. The market opportunity for Level 1 is not well understood, and is the catalyst for this project.

PLAINTIFF'S EXHIBIT 115	EXHIBIT 55
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## RESEARCH PURPOSE

The purpose of this research is to understand the market opportunities for Level 1 Video Dial Tone (VDT) service.

## INFORMATION OBJECTIVES

The following information objectives will guide this research.

- Assess the marketplace for Level 1 by exploring the potential for Level 1 among various customer categories (e.g., business, government, institutions, cable providers, RBOCs, IXC's, CAP's, etc.).
  - Identify the types of organizations most likely to be attracted to an RBOC Level 1 offering.
  - Explore customers' perceptions of the advantages and disadvantages associated with Level 1 versus alternatives.
  - Understand the perceived nature and role of video service offerings among current and prospective providers.
  - Identify perceived drivers and barriers to the market potential for Level 1.
- Assess current characteristics of potential Level 1 providers actively involved in providing programming to a defined group of end-users (e.g., a university to its students). What's unique about their business structure/strategy? What are their plans for the future in terms of being a programming provider?
- Understand the delivery aspects of systems currently being used for program delivery. What would it take for customers to be capable of utilizing Level 1 from an infrastructure standpoint? What factors would drive the decision to pursue these requirements (e.g., economical, technological, infrastructure, etc.)?
- Assess the needs of potential Level 1 customers and U S WEST's ability to address these needs and add value to their businesses. Who else do they perceive as being capable of addressing these needs?
- Explore customers' perceptions of U S WEST as a potential supplier of Level 1, and understand the relationship envisioned by service providers.

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